

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN L. PETEREC TOLINO,

Plaintiff,

-against-

08 Civ. 891 (CM)

COMMERCIAL ELECTRICAL CONTRACTORS
INC. and ARTHUR LOWETH,

Defendants.

x

RESPONSE TO EX PARTE LETTER SENT BY PLAINTIFF'S WIFE
AND DIRECTION TO TRANSFER CASE TO WHITE PLAINS

McMahon, J.:

I have received a letter from the wife of the plaintiff in this action, John Peterec Tolino of Rock Hill, New York, asking that a conference scheduled for this Friday, June 13, be delayed until late in the day – preferably after 4 PM – so that her husband can appear without having to take time off from his new job. Attached to the letter is a notarized “power of attorney” authorizing Mrs. Tolino to appear on her husband’s behalf at the conference if it cannot be adjourned.

I have five things to say.

First, any conference in this case that was originally scheduled for this Friday, June 13, has been rescheduled, because I am busy with criminal matters and cannot handle a civil docket that day. Therefore, there is not need to worry about anyone appearing in court this Friday.

Second, notwithstanding the power of attorney, Mrs. Tolino cannot represent her husband in this matter. He can represent himself, but the only person who can appear on his behalf in court is a licensed attorney. Mrs. Tolino would be guilty of the unauthorized practice of law were she to appear on behalf of her husband. If Mr. Tolino cannot afford to hire an attorney to prosecute this action, he will have to appear on his own behalf; and he will have to proceed as the court directs, without regard to his other responsibilities. The Pro Se Office of the Court is available to assist Mr. Tolino with advice about how to proceed. The judge who is supervising the case cannot advise a pro se party on how to proceed.

Third, there is no indication that a copy of the letter to which I am responding was sent to

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the defendants, or to any attorney representing defendants. Mr. and Mrs. Tolino need to understand that parties cannot communicate with a judge "ex parte" (that is, without the other side's knowing about it). If they send something to the court, they have to send a copy to the other parties as well.

Fourth, there is no indication in the record that defendant Commercial Electrical Contractors, Inc., has been served with process. The docket sheet reflects only that defendant Arthur Loweth has been served, at his residence in Ringwood, New Jersey. Plaintiff needs to follow up to make sure that the corporate defendant is served with process, because the case cannot really proceed until service is effected.

Finally, it is clear that this case should have been filed in the White Plains Courthouse. Plaintiff is the only party to this lawsuit who lives in the Southern District of New York (the defendants reside in the Queens, which is in the Eastern District of New York, and in the District of New Jersey), and plaintiff lives in Sullivan County. I am, therefore, directing that it be transferred to a judge in that courthouse. The June 27 conference is cancelled, and the new judge in White Plains will direct the parties on scheduling.

Dated: June 9, 2008



U.S.D.J.

BY FIRST CLASS MAIL TO:

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